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 TO AMEMBASSY THE HAGUE PRIORITY
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C O N F I D E N T I A L STATE 234040

E.O. 12356: DECL: OADR

TAGS: PHUM, RW

SUBJECT: ESTABLISHMENT OF A WAR CRIMES TRIBUNAL FOR
 RWANDA: DUTCH VIEWS

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1. CONFIDENTIAL - ENTIRE TEXT.

2. SUMMARY. IN A CONVERSATION BETWEEN DUTCH CHARGE VAN HOUTUM AND DRL ACTING ASSISTANT SECRETARY NANCY ELY-RAPHEL ON AUGUST 22, VAN HOUTUM EXPRESSED DUTCH GOVERNMENT ENTHUSIASTIC SUPPORT FOR EXPANDING THE YUGOSLAV TRIBUNAL TO ENCOMPASS RWANDA. ALTHOUGH THE DUTCH GOVERNMENT WELCOMED THE PROSPECT OF THE HAGUE'S BEING THE SEAT OF A RWANDAN TRIBUNAL, HE SUGGESTED THE UN CONSIDER HOLDING A NUMBER OF TRIALS IN AFRICA. HE ASKED THAT THE DUTCH GOVERNMENT BE KEPT INFORMED OF PLANS FOR ESTABLISHING A

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RWANDAN TRIBUNAL. END SUMMARY.

3. VAN HOUTUM EXPRESSED VERY SIMILAR VIEWS TO THOSE OF THE U.S. CONCERNING THE ESTABLISHMENT OF A TRIBUNAL FOR RWANDA. THE NETHERLANDS BELIEVES THAT A TRIBUNAL FOR RWANDA SHOULD BE ESTABLISHED ON AN URGENT BASIS. VAN HOUTUM SPOKE OF THE IMPORTANCE OF UNIFORMITY OF TREATMENT FOR RWANDA AND THE FORMER YUGOSLAVIA AND OF DEMONSTRATING

THAT YUGOSLAVIA WAS NOT BEING SINGLED OUT. ALTHOUGH THE GON IS ENTHUSIASTIC OVER THE PROPOSAL TO LOCATE THE SEAT OF THE TRIBUNAL IN THE HAGUE, VON HOUTUM SUGGESTED THAT TRIAL SESSIONS ALSO TAKE PLACE IN AFRICA. THIS WOULD HAVE A "RADIATION EFFECT" ON WOULD-BE VIOLATORS OF HUMANITARIAN LAW IN THAT REGION BY SERVING AS A DETERRENT AND DOING AWAY WITH INDIVIDUALS' THINKING THEY COULD ACT WITH IMPUNITY.

4. ANOTHER REASON FOR HOLDING TRIALS IN AFRICA IS A PRACTICAL ONE. THERE SIMPLY ARE NOT ENOUGH DETENTION
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FACILITIES IN THE HAGUE AND ENVIRONS TO ACCOMMODATE A LARGE NUMBER OF SUSPECTS. THE GON PLANS TO SOUND OUT EU AND AFRICAN COUNTRIES' VIEWS ON A RWANDAN TRIBUNAL.

5. CRYSTAL NIX OF THE LEGAL ADVISERS' OFFICE SUMMARIZED DISCUSSIONS HELD DURING DRL A/S SHATTUCK'S TRIP TO RWANDA. ONE COULD THINK OF THREE TIERS OF SUSPECTS. THE FIRST TIER INCLUDES THE LEADERS BEHIND THE RWANDAN GENOCIDE. THESE WOULD BE PRIME CANDIDATES FOR TRIALS BY AN INTERNATIONAL TRIBUNAL. THE SECOND TIER ARE THOSE IN THE MILITARY AND MILITIAS WHO EITHER PARTICIPATED IN THE MASSACRES OR ENCOURAGED OR COERCED OTHERS TO DO SO. THIS SECOND TIER WOULD ALSO BE TRIED BY THE INTERNATIONAL TRIBUNAL BUT THERE MIGHT ALSO BE A ROLE FOR THE NATIONAL COURTS. THE THIRD TIER ARE ALL OTHERS WHO PARTICIPATED IN THE SLAUGHTER. THE THIRD TIER COULD BE HANDLED BY RWANDAN COURTS WITH INTERNATIONAL ASSISTANCE.

6. ACTING A/S ELY-RAPHEL OUTLINED U.S. GOVERNMENT VIEWS CONCERNING THE STRUCTURE OF A RWANDAN TRIBUNAL: EXPAND THE JURISDICTION OF THE YUGOSLAV TRIBUNAL TO INCLUDE RWANDA, A COMMON STATUTE AND APPEALS CHAMBER, RULES OF EVIDENCE AND PROCEDURE, PERSONNEL, LIBRARY, COMPUTER, AND OTHER FACILITIES. SHARING A COMMON STATUTE AND APPEALS CHAMBER

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WOULD AVOID CREATING SEPARATE AND INCONSISTENT BODIES OF PRECEDENT AND WOULD ALSO AVOID DELAYS IN CREATING A SEPARATE JUDICIAL BODY. WE NOW HAVE AN EXCELLENT CHIEF PROSECUTOR WHO COULD ENSURE THAT GENERAL PHILOSOPHY AND COMMITMENT OF THE TWO EFFORTS IS COMMENSURATE, ALTHOUGH TWO SEPARATE PROSECUTORIAL OPERATIONS WOULD BE OPERATING INDEPENDENTLY. THE MANDATE OF THE YUGOSLAV TRIBUNAL

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STATUTE, AMENDED TO ACCOMMODATE RWANDA, COULD ALLOW TRIALS IN AFRICA.

7. THE CHARGE ALSO RAISED THE ISSUE OF IMMUNITIES FOR PERSONNEL SECONDED TO THE YUGOSLAV TRIBUNAL, AND DUTCH WILLINGNESS TO CONTRIBUTE FUNDS FOR HUMAN RIGHTS MONITORS IN RWANDA.

8. VAN HOUTUM ASKED THAT THE GON BE KEPT INFORMED OF DEVELOPMENTS AS THEY UNFOLD IN THE UN SO THAT IT CAN MAKE PLANS FOR ACCOMMODATING A RWANDAN TRIBUNAL IN THE HAGUE.

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